THE HONOURABLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NO. 21611 OF 2001

DATED: 01-08-2007

BETWEEN:

Sri Malleswaraswamy Devasthanams,
Rep.by its President S. Ramalingama Naidu,
S/o. Chengalaraya Naidu

…Petitioner

and

The Executive Officer,
Thirumala Thirupathi Devasthanams,
Thirupathi, Chittoor District and another

…Respondents

THE HONOURABLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NO. 21611 OF 2001

ORDER:

This writ petition is filed by the petitioner seeking a writ of Mandamus to declare the action of the respondents in canceling the construction of Kalyana Mandapam at Avulapalli, Somala Mandal, Chittoor District by proceedings dated 11-07-2001 as illegal and consequently sought for a direction to the respondents to construct the Kalyana Mandapam as proposed earlier.

It is stated in the writ petition that as per the policy of the respondents, they have agreed to construct a Kalyana Mandapam on condition of the petitioner depositing a sum of Rs.50,000/- and also providing one acre of land registered in the name of the respondents. It is stated that originally, the proposal was sanctioned by the respondents in the year 1989. In pursuance of that, the petitioner deposited a sum of Rs.50,000/-, but however, one acre of land as required was not registered in the name of the respondents.

Therefore, the proposal was cancelled. Subsequently, at the request of the petitioner, proceedings were issued on 07-10-1998 reviving the proposal. But however, in view of the escalation in the costs, the petitioner was asked to deposit Rs.1,80,000/- with reference to which the petitioner deposited only a sum of Rs.1,00,000/- in addition to the registration of one acre of land in favour of the respondents. Though the petitioner was asked to deposit the balance amount, it did not do so, on the other hand, communicated to the respondents that if the work is started, the balance would be deposited. Therefore, the respondents cancelled the proposal again by the impugned proceedings on the ground that the petitioner did not comply with the terms and also in view of the change of the policy of the respondents-Devasthanam to construct the Kalyana Mandapam only at the mandal and above levels. Questioning the same, the present writ petition is filed.

Learned counsel for the petitioner contended that since the petitioner has substantially complied with the terms of agreement between the parties, the respondents are obligated to construct a Kalyana Mandapam at the place where it has agreed to construct.

A counter is filed on behalf of the respondents narrating all the facts as to how the petitioner has committed default in complying with the terms and also further stated that in fact the cost of the Kalyana Mandapam has gone up to Rs.33,00,000/-, the petitioner was not even asked to deposit any higher amount. But even the amount of Rs.1,80,000/- directed to be deposited, has not been deposited by the petitioner in full. Further, as there was a change in the policy of the Tirumala Tirupathi Devesthanam not to construct the Kalyana Mandapams at smaller and remote places except at Mandal and the above level, the proposal was cancelled even though tenders were called for the construction of Kalyana Mandapam. Since the petitioner

did not comply with the conditions, he cannot seek to enforce against the respondents by seeking a writ of Mandamus.

At the time of hearing, learned counsel for the petitioner relied on a judgment of the apex Court in ***GUJARAT STATE FINANCIAL CORPORATION v. M/S. LOTUS HOTELS PVT.LTD.***[1] where the Apex Court considering the agreed terms between the financial corporation and the respondent entrepreneur and the failure of the financial institution in not releasing the funds, felt that the Corporation cannot refuse to release the funds and accordingly issued a writ of Mandamus. But here, that is not the situation. It is not the case of the petitioner that he has complied with all the terms so as to direct the respondents to comply with their terms. First of all, the petitioner himself did not comply with the terms by depositing the entire amount that is required under the agreement between the parties. In the absence of non-compliance, it is not open to the petitioner to seek a writ of Mandamus against the respondents. Apart from that as a policy, the respondents have taken a decision not to construct Kalyana Mandapams in the smaller and remote places, i.e., below the Mandal level places. When once a policy decision has been taken by the respondents, it is not open to this Court to go against the said policy or to declare that the said policy as illegal.

Under the above circumstances, the petitioner is not entitled to any relief and the same is accordingly dismissed. However, the petitioner is entitled for refund of the amount, which was already deposited. The respondents are directed to refund the amount deposited by the petitioner within a period of two weeks if not already refunded and the petitioner is also entitled to get the land transferred in its favour, which was registered in favour of the respondents-devasthanam. No costs.

S. ANANDA REDDY, J.

Dated: 01-08-2007
Rns

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[1] (1983) 3 Supreme Court Cases 379